

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL BAIL APPLICATION NO.226 OF 2019

Rohit alias Khushal Sunil Jagtap] ... Applicant

Versus

The State of Maharashtra] ... Respondent

Mr. Aniket Nikam, Advocate for the Applicant.

Mr. Prashant Jadhav, APP for the State/Respondent.

CORAM :- SARANG V. KOTWAL, J.

DATE :- 3rd SEPTEMBER, 2019.

P. C. :-

1. The applicant is seeking his release on bail in connection with C.R.No.136/2018 registered with Manmad City Police Station, Nashik u/sec.302, 307, 452, 323, 201, 120 B r/w 34 of I.P.C.

2. The applicant was arrested in this connection on 24/07/2018 and since then he is in custody. The prosecution case is in respect of murder of one Dattu Sadgir which had taken place on 22/07/2018. The FIR in this case is lodged by his sister Vaishali on 23/07/2018. She has stated that, Dattu and his friend's mobile phones were taken by the main accused Papa Karosiya. On that day at about 7.00 p.m.,

the deceased had gone to the house of main accused Papa Karosiya and had demanded back his mobile phone. Dattu had abused him. Papa Karosiya got angry. He called his associates. One was Sopan Hivrale and other two were not known to the first informant. While informant's other brother Nilesh was coming home, he was confronted by these four persons and they assaulted him. Nilesh was lying on the ground. Thereafter, Nilesh was taken to his house and was sent to Manmad for further treatment. At 9.30 p.m., the first informant was cooking food. Dattu was sleeping on the bed. His parents were sleeping in the house. At that time, suddenly Papa Karosiya and his associates entered the house with two big knives. Papa Karosiya assaulted Dattu near his waist. He was dragged outside the house and again was assaulted on his chest. The knife was thrown there itself and he ran away. The other person was also having knife. The first informant snatched that knife from him. That person pushed informant's mother, due to which her head was banged against ground and thereafter, that person also ran away. Dattu was taken to hospital for treatment and he succumbed to his injuries. On this basis, the FIR was lodged.

3. The investigation was conducted and the applicant was arrested on 24/07/2018 as mentioned earlier.

4. Heard Mr. Aniket Nikam, Ld. Counsel for the Applicant and Mr.Prashant Jadhav, Ld. APP for the State/Respondent. With their assistance, I have gone through the entire charge-sheet.

5. Mr. Nikam submitted that, identification of the present applicant is suspicious. His identity is not properly established. He submitted that, the first part of the incident where Nilesh was assaulted is a separate incident and the main offence of commission of murder is the other part of the incident. He submitted that, the supplementary statement of the informant itself mentioned name of the applicant but there is no explanation as to why if the informant knew him, his name was not in the FIR. He submitted that, statements of parents of deceased also show his name and role but when they were asked to identify the applicant in the identification parade held on 21/09/2018, they failed to identify him. He further submitted that, recovery of blood stained pant from his house is not incriminating

because the chemical analysis report shows that the blood group found on the pant was inconclusive.

6. As against these submissions, Ld. APP submitted that, the parents of the deceased are eye witnesses and they have named the present applicant. They have assigned a particular role of the assault on the deceased by him. In view of the evidence, the applicant does not deserve to be released on bail.

7. The significant part in the entire charge-sheet is that, in the FIR the first informant has not named the present applicant. She is very specific about her story that, the main accused Papa Karosiya entered their house with “a person”, that person is not named. The role is attributed only to Papa Karosiya. Suddenly, in her supplementary statement recorded on the same day, she has named the present applicant as the person who had accompanied the main accused Papa Karosiya. She has identified the applicant in the test identification parade. The test identification parade clearly mentioned that, this witness had identified the suspect i.e. the present applicant. The incident had taken place in two parts. In the first part at 7.00 p.m., informant’s other brother Nilesh was assaulted. There again her story

is that, the main accused Papa Karosiya, one more Sopan Hivrale and two unknown persons had assaulted Nilesh. The investigation is common about these two incidents. Therefore, reference of her identification would be in respect of the incident at 7.00 p.m. or 9.00 p.m., therefore it cannot be observed with certainty that the informant had identified the applicant as the person who had accompanied the main accused when the assault had taken place on the deceased in the house. Consequently her case is that, she snatched the knife from the hand of that person. She has not suffered any injuries in the scuffle. It is rather difficult to believe even at this stage that, she could snatched away the knife from his hand and she had not suffered any injuries.

8. As far as the statement of parents are concerned, though they have specifically named the accused/applicant as the person who was accompanying the main accused Papa Karosiya, they were also asked to identify the suspect-applicant. In that parade, significantly, they had not identified the applicant. This is a strong circumstance in favour of the applicant. Therefore, the argument that, the applicant was named in their statement has no substance because in that case,

the police themselves had asked them to identify the applicant in the test identification parade. Thus, taking all these factors into consideration, the evidence against the present applicant is doubtful and he deserves to be released on bail. Of course, all these observations are made only for consideration of his bail application. The evidentiary value of these circumstances ultimately will have to be tested during trial. In view of the aforesaid discussion, following order is passed.

ORDER

1. The Applicant is directed to be released on bail in connection with C.R.No.136/2018 registered with Manmad City Police Station, Nashik, on his furnishing P.R.Bond in the sum of Rs.25,000/- (Rupees Twenty Five Thousand Only) with one or two sureties in the like amount.
2. Application stands disposed of accordingly.

(SARANG V. KOTWAL, J.)